

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations.

Rulemaking 11-10-023
(Filed October 20, 2011)

**DECISION GRANTING COMPENSATION TO SIERRA CLUB TO DECISION
13-06-024**

Claimant: Sierra Club	For contribution to D.13-06-024
Claimed: \$39,161.10	Awarded: \$37,347.00
Assigned Commissioner: Florio	Assigned ALJ: David M. Gamson

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision 13-06-024 adopted local procurement obligations for 2014 and an interim “flexible capacity” framework from 2015-2017. The flexible capacity framework is intended to address the need to ensure the operational availability of resources with flexible attributes to meet future ramping needs in the late evening that are projected to increase with higher penetration of solar resources. The Decision declined to adopt a flexible capacity requirement in 2014 due to lack of need. The Decision provided that in the coming year, prior to implementation of flexible capacity procurement requirements, the Commission would develop rules to allow participation by preferred resources and energy storage.
--	--

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	n/a	
2. Other Specified Date for NOI:	Nov. 28, 2011	Yes.
3. Date NOI Filed:	Dec. 19, 2012 (Sierra Club concurrently filed and served a Motion to Late File an NOI and the NOI. However, Sierra Club recently discovered appears that only the Motion was docketed, not the NOI. Sierra Club refiled and served the NOI on August 20, 2013.	Yes, Sierra Club's Motion to Late File the NOI was filed with the Commission on December 19, 2012. The NOI was not filed until August 21, 2013.
4. Was the NOI timely filed? No, but motion to late-file granted by ALJ Gamson on May 21, 2013 (Included as Attachment 2)		Agreed.
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.12-06-013	Yes.
6. Date of ALJ ruling:	Feb. 25, 2013	Yes.
7. Based on another CPUC determination (specify):	n/a	
8. Has the Claimant demonstrated customer or customer-related status?		Yes, Sierra Club has demonstrated its status as a customer.
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.12-06-013	Yes.
10. Date of ALJ ruling:	Feb. 25, 2013	Yes.
11. Based on another CPUC determination	n/a	

(specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes, Sierra Club has demonstrated significant financial hardship.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-06-024	Yes.
14. Date of Issuance of Final Order or Decision:	July 3, 2013	Yes.
15. File date of compensation request:	August 23, 2013	Yes.
16. Was the request for compensation timely?		Yes, Sierra Club's request for compensation was timely filed.

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
	Sierra Club		Sierra Club is a non-profit public benefit corporation with over 600,000 members nationwide, and more than 140,000 members living in California. Our mission includes promotion of the responsible use of the earth's ecosystems and resources, and education of the public about the need to protect and restore the quality of the natural and human environment. Sierra Club advocates on behalf of its members for clean, renewable energy to reduce air pollution, water pollution, and the effects of climate disruption resulting from fossil fuel extraction and combustion. Sierra Club works to pass laws and develop regulations needed to decarbonize California's economy and achieve and strengthen the State's environmental and energy objectives.

PART II: SUBSTANTIAL CONTRIBUTION**A. Description of Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).**

Intervenor's Claimed Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
<p>1. CAISO Need Analysis for Flexible Capacity Procurement – accounting for fixed/tracking solar</p> <ul style="list-style-type: none"> Sierra Club argued that CAISO's estimates overstated the need for flexible capacity procurement by failing to accurately estimate the ratio of fixed v. tracking solar resources. "Based on input from the Sierra Club..." the CAISO, updated its solar profiles and lowered its estimates for flexible capacity need during the shoulder months when need was greatest. Lowering of CAISO estimates translated into lower procurement requirements in the Commission decision, which was based off CAISO updated projections. Reduced procurement need as a result of Sierra Club's analysis reduced ratepayers costs of flexible capacity procurement. 	<p>Sierra Club and Vote Solar Comments on Resource Adequacy and Flexible Capacity Procurement Joint Parties Proposal (Dec. 26, 2012) at 3-6.</p> <p>CAISO, Updated Flexible Capacity Requirements based on Updated RPS Profiles, March 22, 2013 (Included as Attachment 3).</p> <p>D.13-06-024, A2.</p>	<p>Yes.</p>
<p>2. Lack of Immediate Need for</p>	<p>Sierra Club and Vote Solar Comments</p>	<p>Yes.</p>

<p>Flexible Capacity Procurement</p> <ul style="list-style-type: none"> Sierra Club argued that, contrary to assertions by the CAISO, SDG&E, and SCE (Joint Parties), flexible capacity procurement was not needed in the near term due to significant existing supply of flexible resources and minimal near term need. The Commission declined to adopt flexible capacity procurement in 2014 as advocated by the Joint Parties. 	<p>on Resource Adequacy and Flexible Capacity Procurement Joint Parties Proposal (Dec. 26, 2012) at 2-14.</p> <p>Sierra Club Opening Comments (Apr 5, 2013) at 2-4.</p> <p>Sierra Club Reply Comments (April 15, 2013) at 1-3.</p> <p>D.13-06-024 at 23 (“Vote Solar and Sierra Club contend there is no need for a flexible capacity procurement program in 2014, and instituting an interim program in 2014 provides, at best, speculative benefits.”)</p> <p>D.13-06-024 at 35 (“we do not adopt a flexible capacity requirement for RA year 2014 in this decision.”)</p>	
<p>3. Inclusion of Preferred Resources.</p> <ul style="list-style-type: none"> Sierra Club argued that a flexible capacity procurement regime must include meaningful participation of preferred resources and that the proposed flexible capacity procurement mechanism was inconsistent with the loading order because “flexibility” was defined in a manner that excluded meaningful participation by energy storage and demand response. The Decision agreed that definitions should be developed 	<p>Sierra Club and Vote Solar Comments (Dec. 26, 2012) at 1-2, 15-16.</p> <p>Sierra Club Opening Comments (April 5, 2013) at 4-6.</p> <p>Sierra Club Reply Comments (April 15, 2013) at 4-5.</p> <p>D.13-06-024 at 48 (“Sierra Club states that ‘[d]espite the paramount importance of these concerns, the Proposals are highly dependent on fossil fuels to meet renewable integration needs and exclude demand response and energy storage.’”)</p> <p>D.13-06-024 at 51 (“we agree with parties who advocate for a mechanism to allow preferred resources to participate in the flexible capacity framework we approve today.”)</p>	<p>Yes.</p>

prior to program implementation to allow meaningful participation by these resources.		
<p>4. Remove biases in proposed decision toward meeting flexibility from “generating resources.”</p> <ul style="list-style-type: none"> The Proposed Decision contained several references to the need for “generating resources” to fill flexible capacity needs. Sierra Club argued that use of the qualifier “generating” created an improper biases toward fossil fuels as opposed to other solutions, such as energy storage or demand response, that may not “generate” energy but nonetheless can be used to meet flexibility needs. References to “generating resources” were modified in the final decision. 	<p>Sierra Club Opening Comments on Proposed Decision 2-3.</p> <p>Compare Proposed Decision with Final Decision at 12, Finding of Fact #4 (removing “generating” resources).</p>	Yes.

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (ORA) a party to the proceeding?¹	Yes	Verified.
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified.

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013), which was approved by the Governor on September 26, 2013.

<p>c. If so, provide name of other parties:</p> <p>Sierra Club was the only environmental group in this proceeding. Other clean energy advocates included Vote Solar, CEERT, and Clean Coalition.</p>	<p>Verified.</p>
<p>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>Sierra Club spoke frequently with ORA regarding CAISO analysis to coordinate and complement positions on need for flexible capacity procurement and work through technical issues. Sierra Club filed joint opening comments and subsequently coordinated with Vote Solar on positions.</p> <p>When similar issues were covered, Sierra Club provided its own analysis and unique perspective as an environmental group. Sierra Club was one of the only parties to provide expert opinion on need and emphasize the solar load profile issue. The result was a complementary showing that built off each other toward common objectives. A review of the final decision reveals that when multiple parties worked on an issue, the results were cumulative, not duplicative. Multi-party participation was necessary in light of the several parties (CAISO, SCE, SDG&E and others) advocating opposing positions.</p>	<p>Agreed.</p>

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
	Sierra Club		<p>Sierra Club contributed substantially to the development of the record by conducting discovery on CAISO analysis and filing a Motion for Evidentiary Hearings jointly with The Utility Reform Network. This proceeding was characterized by delayed and incomplete disclosure of relevant data necessary to assess the timing and need for flexible capacity procurement. While the Motion for Evidentiary Hearings was ultimately denied by the Commission because flexible capacity procurement was not adopted for 2014, Sierra Club believes it served its ultimate purpose in pressuring CAISO to disclose relevant information in a more timely and complete manner. However, because the Motion was ultimately denied by the Commission, Sierra Club's intervenor compensation request does not seek recovery for time associated with drafting the Motion and Amended Motion for Evidentiary hearings.</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§§ 1801 & 1806):**

<p>a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)</p> <p>Sierra Club requests \$37,983 in fees and costs for its advocacy in this proceeding. Sierra Club participated in all major aspects of this Phase, including filing multiple comments, conducting discovery, providing expert opinion on CAISO estimates, filing a motion for evidentiary hearings, and participating in workshops. In general, the Sierra Club advocated for a lower finding of need, a delay in flexible capacity procurement implementation, and the inclusion of preferred resources in a flexible capacity procurement mechanisms. Sierra Club achieved each of these objectives and its analysis was relied upon to lower flexible capacity need.</p> <p>Sierra Club’s request is likely a very small portion of the benefits that utility customers are likely to ultimately realize due to the reduction in unnecessary procurement.</p>	<p>CPUC Verified</p> <hr/> <p>Verified.</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>Sierra Club participated in all major aspects of this Phase, including filing multiple comments, conducting discovery, providing expert opinion on CAISO estimates, filing a motion for evidentiary hearings, and participating in workshops. Total hours Sierra Club spent in this proceeding are much higher than the hours for which Sierra Club now seeks recovery. Sierra Club does not include hours spent on issues for which it did not prevail (e.g. drafting and researching Motion and Amended Motion for Evidentiary hearing) or issues the Commission ultimately did not address (e.g. CEQA analysis of flexible capacity procurement regime). Hours claimed directly relate to work performed where Sierra Club made a substantial contribution to an outcome.</p> <p>In addition, Sierra Club work in this docket was performed by one attorney and one expert. This avoided internal duplication of time.</p>	<p>Verified, <i>but see</i> CPUC Allowances and Deductions in Part III.C.</p>
<p>c. Allocation of Hours by Issue</p> <p>Sierra Club has divided its work into three issues: (1) timing and extent of need of flexible capacity procurement (first two above identified contributions); and (2) inclusion of preferred resources and energy storage (second two above identified contributions); and (3) hearings, review hearing materials and party comment. Breakdown of time spent on these</p>	<p>Verified.</p>

issues is identified in the time sheets of Matthew Vespa and Bill Powers.	
---	--

B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hour s	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Matthew Vespa	2012	18	\$315	Resoluti on ALJ- 287	\$5670	18	315.00 [1]	5,670.00
Matthew Vespa	2013	63.6	\$330	Resoluti on ALJ- 287	\$20,988	63.6	320.00 [2]	20,352.00
Bill Powers	2012- 13	75.5	\$150	Resoluti on ALJ- 287	\$11,325	75.50	150.00 [3]	11,325.00
Subtotal: \$ +\$37983						Subtotal: \$ 37,347.00		
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Matthew Vespa	2013	7.1	\$165	½ of attorney rate,	\$1178.10	0	00.00	00.00 [4]
Subtotal: \$1,178.10						Subtotal: \$00.00		
TOTAL REQUEST: \$39.161.10						TOTAL AWARD: \$37,347.00		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>** Approved Travel and Reasonable Claim preparation time compensated at 1/2 of preparer’s approved hourly rate</p>								

Attorney	Date Admitted to CA BAR²	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
Matthew Vespa	December 6, 2002	222265	No

C. CPUC Disallowances and Adjustments:

Item	Reason
[1]	Based on experience and training, the Commission approves a rate of \$315 for Vespa in 2012.
[2]	As described in Resolution ALJ-287, the Commission applies a 2% cost-of-living adjustment to 2013 rates. After rounding, Vespa’s 2013 rate is set at \$320.
[3]	The Commission approves Powers rate of \$150 for this proceeding. The Commission recognizes that Power’s may seek, and has previously been awarded, higher rates in other proceedings.
[4]	Sierra Club did not submit timesheets documenting the hours spent preparing intervenor compensation materials. As such, the Commission cannot compensate for the work.

² This information may be obtained at: <http://www.calbar.ca.gov/>.

PART IV: OPPOSITIONS AND COMMENTS

**Within 30 days after service of this Claim, Commission Staff
or any other party may file a response to the Claim (*see* § 1804(c))**

A. Opposition: Did any party oppose the Claim?	No.
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(C)(6))?	Yes.

FINDINGS OF FACT

1. Sierra Club has made a substantial contribution to Decision 13-06-024.
2. The requested hourly rates for Sierra Club's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$37,347.00.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Sierra Club is awarded \$37,347.00.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric Company shall pay Sierra Club their respective shares of the award, based on their California-jurisdictional electric revenues for the 2013 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning November 6, 2013, the 75th day after the filing of Claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1306024		
Proceeding(s):	R1110023		
Author:	ALJ Gamson		
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
Sierra Club	August 23, 2013	\$39,161.10	\$37,347.00	N/A	<i>See Part III.C.</i>

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Bill	Powers	Expert	Sierra Club	\$150	2012	\$150.00
Bill	Powers	Expert	Sierra Club	\$150	2013	\$150.00
Matthew	Vespa	Attorney	Sierra Club	\$315	2012	\$315.00

(END OF APPENDIX)